IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

C.M.S.A.No.34 of 1994

1. Rajathi Ammal
2. Lalitha .. Appellants

-Vs-

1. Annalakshmi
2. Sornamani .. Respondents

PRAYER: Against the fair and decreetal order of the Court of the Subordinate Judge, Periyakulam made in C.M.A.No.4 of 1990, dated 20.4.199 3 preferred against the fair and decreetal orders of the Court of the District Munsif, Uthamapalayam in O.S.E.A.No.115 of 1986 in O.S.E.P.No.931 of 1985 in O.S.No.297 of 1974, dated 21.11.1986.

!For Appellants : Mr.R.Nandakumar

^For Respondents: No appearance

:JUDGMENT

The appellants 1 and 2 are the wife and daughter of the second respondent respectively. The appellants are the plaintiffs in the suit O.S.No.297 of 1974 before the District Munsif Court, Uthamapalayam laid for maintenance against the second respondent/husband and the said suit was decreed and charge was also created and half share of the property of the second respondent was attached, which half share was also attached in E.P.No.260 of 1974 to execute the decree in O.S.No.1130 of 1970 on the file of the District Munsif, Periyakulam laid by one Shanmugavelu, even before the charge was created by the appellants on 24.6.1994 in O.S.No.297 of 1974.

2. In view of the above admitted fact that the charge created on 24.6.1974 in O.S.No.297 of 1974 is subject to the order of attachment in E.P.No.260 of 1974 in O.S.No.1130 of 1970 laid by one Shanmugavelu, the application E.A.No.115 of 1986 filed by the first respondent under Order 21 Rule 58 of the Code of Civil Procedure was allowed and the attachment effected by the appellants was raised and the same was also confirmed by the learned Subordinate Judge, Periyakulam in C.M.A. No.4 of 1990. Hence, this civil miscellaneous second appeal.

3. This appeal was admitted on the following substantial questions of law:

"Whether a charge created in a maintenance decree over a property can be considered as an absolute transfer of title?"

4. Concededly, the half share of the second respondent in the property in question was attached by the decree holder in O.S.No.1130 of 19 70 as early as on 21.8.1973 itself. On the other hand, charge was created on the decree obtained by the appellants herein only on 24.6.19 74. Therefore, the said charge is only subject to the attachment dated 21.8.1973 obtained by one Shanmugavel. It is pursuant to the said order of attachment dated 21.8.1973, the half share of the second respondent was sold in the court auction. Therefore, assuming the charge was created on 24.6.1974 in O.S.No.297 of 1974 in favour of the appellants, the said charge is only subject to the order of attachment dated 21.8.1973 in O.S.No.1130 of 1970 filed by Shanmugavel.

5. In that view of the matter, the charge created on 24.6.1974 in O.S.No.279 of 1974 on the file of the District Munsif Court, Uthamapalayam, by itself, will not create any substantial right nor could be considered as an absolute transfer of title to the appellants. Hence, in my considered opinion, both the courts below are right in holding that the first respondent is entitled for the claim over the half share of the second respondent, which was, admittedly, purchased by the first respondent pursuant to the execution of the decree in O.S.No.1130 of 1970.

In the result, answering the substantial question of law against the appellants, this appeal is dismissed. No costs.

Index :Yes
Internet:Yes

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To:

1. The Subordinate Judge
Periyakulam (With Records)

2. The District Munsif
Uthamapalayam (With Records)

3. The Section Officer
VR Section, High Court
Madras.

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